IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:11/09/2004

CORAM

THE HONOURABLE Mr. JUSTICE P.D.DINAKARAN
and
THE HONOURABLE Mr. JUSTICE K.RAVIRAJA PANDIAN

W.P.No.40510 of 2002
and W.P.40511 of 2002
& W.P.M.P.Nos.60096 & 60098 of 2002

P.A.Mohammed Iqbal .... Petitioner in both W.Ps.

-Vs-

1. Deputy Commercial Tax Officer,
Gudalur, Nilgiris District.

2. Appellate Assistant Commissioner,
of Commercial Taxes, Coimbatore

3. The Registrar,
Tamilnadu Taxation Tribunal,
Chennai. .... Respondents in both W.Ps

Writ petitions filed under Article 226 of The Constitution of India
praying for the issuance of writ of certiorarified mandamus as stated therein.

For Petitioner : Mr.Bala Ventaka Giri

For Respondents : Mr.T.Ayyasamy, Spl.G.P.(Taxes)

:ORDER
(Order of the Court was made by P.D.DINAKARAN,J)

These writ petitions have been filed by the petitioner praying to issue a writ of certiorarified mandamus to call for the records relating to the Order passed by the 3rd respondent in O.P.No.828 & 827 of 2 002 dated 20.9.2002 conforming the order of the 2nd respondent in M. P.No.11 & 10 of 2002 dated 27.3.2002, quash the same and direct the second respondent to entertain the appeal by condoning the delay of 58 days and pass orders on merits.

2. Concededly, the issue whether the appellate authority can exercise the power to condone the delay in filing the appeal is covered by a decision of this Court in W.P.Nos.22710 of 2003 and 22757 of 2003 dated 13.8.2003, which reads as follows:

"…. learned counsel appearing for the petitioner in both the writ petitions submits that a division bench of this Court in M/s. Devi Printers Vs. Commercial Tax Officer and others in W.P.Nos.21179 and 211 80 of 2002 by order dated 18.6.2002 condoned the delay, even beyond the period of 30 days, by awarding costs.

3. The learned Special Government Pleader (Taxes) on taking notice on behalf of the respondents has relied upon two other division Bench judgments of this Court, one in Indian Coffee Worker's Co-op. Society Ltd., -vs- Commissioner of Commercial Taxes reported in 2002(1) C.T.C. 406 as also Quantas Engineers & promoters (P) limited -vs- Tamilnadu Taxation Special Tribunal and others reported in (2003) Vol. 131 STC 529, which have held, while dealing with section 31 of the Tamilnadu General Sales Tax Act, 1959, that there is no power to condone the delay under Section 5 of the Indian Limitation Act, as it is only 30 days, for which the Legislature has given power to the Tribunal to condone the delay and not beyond that, and the power which is not given under the statute cannot be assumed or exercised by the Courts. It is true that in the decision cited 1st supra, namely, M/s. Devi Printers Vs.Commercial Tax Officer and others, the delay was condoned, but the provision contained in section 1 of the TNST Act was not brought to the notice of the Court and there was no interpretation revolving around the impact of the prescription of only 30 days for the purpose of condoning the delay. Elaborate arguments were advanced in the above two judgments, the Supreme Court judgment rendered in Union of India -vs- M/s. Popular Construction Company reported in 2001 (4) C. T.C. 213 has been followed. In Mukri Gopalan Vs. C.P.Aboobacker reported in AIR 1995 SC 2272, it was held that if the application of Limitation Act is not specifically excluded, then automatically Section 29 (2) of the limitation Act comes into operation and provisions contained in sections 4 to 24 of the limitation Act are applicable, and in that event, section 5 of the Limitation Act can be availed of not only before the Courts but also before the Tribunals and all other authorities, which exercise the judicial and quasi-judicial functions, but the said proposition has to be understood in the context of what is stated in the later Supreme Court judgment in Union of India Vs. M/s. Popular Construction Co., cited 4th supra, that prescription of the period of limitation under Special law with power to condone the delay only for a specified period amounts to express exclusion of Limitation Act.

4. In view of the later judgment of the Supreme Court and the consequent two division bench judgments of this Court, we have got no alternative but to dismiss the writ petitions, holding that there is no power for condonation of delay beyond 30 days of what is prescribed in Section 31 of the TNGST Act. Accordingly, both the writ petitions are dismissed."

3. Following the above decision, these writ petitions are dismissed. No costs. Consequently W.P.M.P.Nos.60096 & 60098 of 2002 are also dismissed.

Index :Yes
Internet:Yes

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To

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of Commercial Taxes, Coimbatore

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